

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Cr. No. 16-20291

v.

Hon. Nancy G. Edmunds

ISAAC JAMES HARGROVE,

Defendant.

/

**REPLY TO GOVERNMENT'S RESPONSE TO
ISAAC HARGROVE'S THIRD SUPPLEMENTAL BRIEF**

The government filed a response to Isaac Hargrove's third supplemental brief disclosing new health diagnoses and worsening conditions. In that brief, the government made five errors that must be corrected.

First, the government twice claims that Mr. Hargrove has served only 25% of his sentence. (R. 46, Gov't Resp. to 3d Supp. Br., PgID 1323, 1329) That is false and plainly contradicted by the record. As of July 17, 2020, Mr. Hargrove had served 35.5% of his full term and 41.2% of his statutory term. (R. 40-2, Sentence Info, PgID 904)

Second, the government has apparently backtracked and now argues that Mr. Hargrove does not present "extraordinary and compelling circumstances" warranting relief. (R. 46, Gov't Resp. to 3d Supp. Br., PgID 1326) The government has already conceded that because Mr. Hargrove's has been diagnosed with "ascending

aortic aneurysm, obesity and hypertension, which the CDC has identified as risk factors for Covid-19,” he “has satisfied the first eligibility threshold for compassionate release during the pandemic.” (R. 38, Gov’t Resp. Opp’n to Mot., PgID 849–50) The CDC hasn’t changed its guidelines in any meaningful way to undermine that concession. And since July, Mr. Hargrove has been diagnosed with Type 2 diabetes, which is also a health condition that puts “[a]dults of any age . . . at increased risk of severe illness from the virus that causes COVID-19[.]”¹ If the government’s position has changed, it has not offered any compelling reason as to why.

Third, the government points out that people who have tested positive for COVID-19 and recovered have been denied compassionate release. (R. 46, Gov’t Resp. to 3d Supp. Br., PgID 1325–26) This is confusing because, as far as undersigned counsel knows, Mr. Hargrove has *not* yet been diagnosed with COVID-19. In any event, evidence is emerging that people who have been sick with COVID-19 can be reinfected and present worse symptoms.²

¹ Centr. for Disease Control, *People at Increased Risk: People with Certain Medical Conditions* (updated Nov. 2, 2020), https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html (last visited Nov. 3, 2020).

² de Araujo Torres, Ribeiro, & Reillo, et al., *Reinfection of COVID-19 after 3 months with a distinct and more aggressive clinical presentation: a case report*, J. of Medical Virology (Oct. 28, 2020), <https://onlinelibrary.wiley.com/doi/epdf/10.1002/jmv.26637>.

Fourth, the government claims “[n]o inmates have tested positive” at FCI Hazelton. (R. 46, Gov’t Resp. to 3d Supp. Br., PgID 1328) The BOP’s website is confusing and contradictory. In the portion of the page titled “COVID-19 Cases,” the website claims no incarcerated people are currently positive for or have recovered from COVID-19. But the section labeled “COVID-19 Inmate Test Information,” states that four incarcerated people have tested positive for the virus.

Fifth, the government calls the Third Supplemental Brief a “re-newed request for compassionate release,” and states that this Court previously denied his motion. That is not the case. Mr. Hargrove’s motion for compassionate release has been pending since June 23, 2020. (Dkt. #32) After appointing counsel, this Court gave notice that the motion would be decided without a hearing. (Dkt. #35) To date, this Court has not ruled on his motion.

CONCLUSION

Isaac Hargrove’s motion for compassionate release should be granted.

Respectfully Submitted,

FEDERAL COMMUNITY DEFENDER

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Date: November 3, 2020

CERTIFICATE OF SERVICE

Counsel certifies that on the above date, the foregoing paper was filed with the clerk of the Court using the ECF system, which will send notification to opposing counsel.

Respectfully Submitted,

FEDERAL COMMUNITY DEFENDER

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